IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1067

PAUL JOSEPH RILEY and
ALAN MARK SILBERGELD, *Petitioners*

v.

DISTRICT OF COLUMBIA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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Congressional Record, Vol. 23, Part 2 at p. 1134

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Petitioners, Paul Joseph Riley and Alan Mark Silbergeld, respectfully pray that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals entered in this proceeding on November 24, 1971.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals, not yet reported, is set forth in the appendix to this petition. The opinion of the District of Columbia Court of General Sessions is not reported, but it also is set forth in the appendix hereto.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered November 24, 1971. Petitioners' timely motions for rehearing were denied December 28, 1971. This petition for certiorari is filed within ninety days from the date of judgment in the Court of Appeals.

This court's jurisdiction is invoked pursuant to 28 USC § 1257(3) as amended by Act of July 29, 1970, Publ. L. 91-358, Title I, § 172 (a) (1), 84 Stat. 590 and Chapter 1 of the same title, being § 1-102 of the District of Columbia Code.

QUESTIONS PRESENTED

1. Does the District of Columbia's "Disturbing Religious Congregation" statute (Act of July 29, 1892, 27 Stat. 324, c. 320, § 11; D. C. Code § 22-1114) violate the First Amendment by (a) giving special protection to religious assemblies not afforded secular gatherings, or (b) enforcing conformity to forms of worship prescribed by religious bodies?

2. Does the statutory language "molest or disturb" adequately define a crime so as to satisfy Fifth and Fourteenth Amendment vagueness requirements and First Amendment overbreadth standards?

3. Does the record in this case justify the court's conclusion that "the trial court did not attempt to decide an ecclesiastical question nor to enforce religious conformity"?

STATUTORY PROVISIONS INVOLVED

July 29, 1892, Congress passed an act containing in Section 11 of Chapter 320, 27 Stat 324, the following language now found in D. C. Code 1967, § 22-1114:

Disturbing Religious Congregation

> It shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provisions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense.

STATEMENT OF THE CASE

Defendants were charged with "disturb[ing] a congregation engaged in a religious exercise" at Blessed Sacrament Catholic Church in the District of Columbia, contrary to the Congressional Act of July 29, 1892, 27 Stat. 324, c. 320, § 11, being D. C. Code 1967, § 22-1114. (A 1)

According to the bill of particulars, "the precise manner in which the crime is alleged to have been committed" was that

defendants "passed out literature while the ushers were passing the basket through the congregation taking up a money collection." When defendants "without authorization or permission passed out literature during the collection" at "a Catholic Mass," this activity "disrupted the worshipful, devout mood of the congregation." (A 1)

No disorderly, irreverent or contumaceous conduct or words of any kind were charged or proven against defendants other than the distribution of literature "without authorization or permission." Defendants, after handing out their leaflets, quietly left the church within ten to twenty seconds after being asked to do so by the officiating clergyman. (A 7, 12, Tr 61, 109-110, 116-117, 173)

After trial without a jury the court entered findings of fact and conclusions of law (A 2) holding both defendants guilty and imposing the maximum one hundred dollar fine permitted by the statute The Court of Appeals affirmed the convictions (A 10) and the application to this court followed.

REASONS FOR GRANTING THE WRIT

Religious disturbance statutes such as the one here involved are prevalent throughout the United States, being derived from the English Common Law. Their enforcement presents consitutional issues of extraordinary importance to the preservation of religious and political freedom in our society. These issues and their importance are well illustrated by the statute and case at bar:

1. The District's religious disturbance statute violates the First Amendment in giving special protection to religious assemblies not afforded secular gatherings and by enforcing conformity to forms of worship prescribed by religious bodies.

This frankly ecclesiastical statute – which goes so far as to grant clergymen the power to make arrests – is derived from the English Common Law existing in Maryland prior to the institution of the Constitution of the United States. [1] But that English Common Law, as respects Church-State relationships, was explicitly repudiated by the First Amendment to our Constitution. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . ." say the first words of the Bill of Rights.

The English religious disturbance statutes, from which the District's is derived [2] were clearly intended to enforce conformity to the modes of worship established by Parliament in the course of its continuing battle with Roman Catholics on one hand and Radical Protestants on the other.

In Moone's case (1681), T. Jo. 160, 84 E. R. 1196, a member of the congregation interrupted a minister who was reciting a prayer from the state-approved Book of Common Prayer. Moone contended that the law was only intended to protect the Mass as it existed during the last year of Henry VIII, and thus did not prohibit him from interrupting a reading from the Book of Common Prayer. His contention was rejected by the Court which held that the statute did not refer to the content of the service, but to the continuing

---

[1] The very brief legislative history of this section (Congressional Record, Vol. 23, Part 2 at p. 1134) suggests that it was intended to codify existing Common Law in this city derived from Maryland prior to the Act of Cession. U.S. v. Brooks, 4 Cranch (4 D. C.) 427 (1834). Present, far more specific Maryland law, dates in all material respects from Maryland Laws of 1824, Chapter 53, Section 5 passed January 19, 1825. It was, therefore, obviously not the existing law of the city referred to in the Congressional Record.

[2] 1 Mar. Sess. 2 C. 3 (1553), "molest let disturbe vexe or trouble . . ." See also s. 15 of the Toleration Act, 1688 (c. 18), Places of Religious Worship Act, 1812 (c. 155) "disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly or congregation, or any person or persons there assembled . . .", Ecclesiastical Courts Jurisdiction Act of 1860 (c. 32)

authority of the state to establish the service. As late as 1934 it was held in Matthews v. King, 1 K. B. 505, that the purpose of such statutes was to protect clergymen in doing, as a part of the service, that which they had a legal duty to do under statute.

Given this unmistakeable lineage, it is hard to see how such statutes can be read as constitutionally permissible in this country.

The trial court answered this conflict by quoting the rationalization of the United States Criminal Court of the District of Columbia in U. S. v. Brooks, 4 Cranch (4 D. C.) 427 (1834):

> An indictment at common law, in England, will lie for "unjustly and irreverently disturbing and hindering the curate of a parish in the exercise of his office and the reading of divine service." That, it is true, was for the disturbance of divine service as established by law. But in this country there is no established church, all being equally protected by law; and each sect having as perfect a right to be free from disturbance in the public worship of God according to their own forms, as the established church in England has by the common law.

But this rationalization is plainly at war with:

(a) Presbyterian Church v. Hull Church, 393 U. S. 440 (1969) because it requires the civil courts to determine for each particular religious congregation, as Brooks says, the manner of "public worship of God according to their own forms, as the established church in England has by the common law;" and

(b) Everson v. Board of Education, 330 U. S. 1, 15 (1947), wherein it was said:

> . . . Neither a State nor the Federal Government can . . . pass laws which aid one religion, *aid all religions*, or prefer one religion over another.

> . . .No person can be punished for entertaining or professing religious beliefs or disbeliefs. . . .*Neither a State* nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. . . .[Emphasis added]

§ 22-1114 affords protection to religious assemblies gathered in churches or places of worship. It offers no protection to other lawful assemblies, gatherings, meetings or congregations. Nowhere in the D.C. Code is there any provision affording similar protection to non-religious gatherings.

2. In the light of this court's decision in Coates v. Cincinnati,—U.S.—, 29 L Ed 2d 214, decided June 1, 1971, it will no longer do for courts to answer the problem of vagueness and overbreadth by reference to dictionary definitions and well understood meanings of words like "disturb" or "annoy" (A 14). The trouble with the common meaning approach is that while meaning of the word is clear enough the conduct which "disturbs" or "annoys" is not specified at all.

> Conduct that annoys some people does not annoy others. Thus, the ordinance is vague not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all....(29 L. Ed. 2d 217)

The range of things that may "disturb" or "annoy" are well illustrated by an inventory of reactions in this case.

Some parishioners were disturbed before entering the church by news reports and the presence of police officers and police cars around the church. One prosecution witness "had a feeling at the beginning of the Mass that there would be an explosion or bomb or something." He developed this

feeling before defendants did anything, and because of prior publicity, even before he got into church (Tr. 102. Cf. also Tr. 172). Another prosecution witness stated that she didn't know anyone was distributing leaflets until an unidentified woman stood up and yelled "Officer, Officer, arrest these men." She thought this was the signal for the disturbance to begin (Tr. 111).

Thus, what the Court of Appeals calls "conflicting evidence" (A12) is really a matter of "conflicting reactions." Different things disturbed different people in different ways for different reasons: "one man being fearful that someone would strike appellants; . . .the pastor being particularly disturbed by the frenzied activity what with the [appellants] throwing things into each pew and the people throwing them back and by the fact that the Mass was stopped (interrupted)" (A-12). One woman was disturbed because she felt the church authorities had no right to place restrictions on speaking, standing or distributing literature as they attempted to do by announcement at the beginning of Mass (Tr. 222). Others (Tr. 102-103) thought the high point of the disturbance was when the priest officiating at the service announced that "the disturbance that we expected is now taking place" (Tr. 61).

Contrary to the assumption of the Court of Appeals, unsupported by any evidence of record or any finding of the trial court, that "it was not the views expressed in the literature appellants were distributing which disturbed the congregation; rather it was the manner in which the literature was distributed," the pastor himself testified to the contrary. He was asked on cross-examination (Tr. 90):

> Q. If they had moved in a more deliberate manner, then, without being frenzied and hurried, then the only basis would be their lack of authorization?
>
> A. It would also have been what they were distributing and the accusation that was made.

Everybody knew the accusation: institutional racism in the Roman Catholic Church.

It is, therefore, of no legal consequence that we know what the word "disturb" means. It is not even a matter of legal consequence that we concede that many people in this congregation were "disturbed." The question still remains, "disturbed by what legally prohibited conduct?"

The statute does not answer that question.

Nor does the court. The only objective criterion for limiting the vast emotional range embraced by the exciting word "disturb," is that (A 17): "A trivial incident, even if explicitly forbidden, could not be the basis of a conviction under § 22-114." Why twenty seconds of disobedient leafleting is not trivial remains unexplained. Furthermore the example of a trivial incident given, namely, "standing at improper times" was one mode of conduct expressly forbidden by the official statement read to the congregation. By what standard is anyone to judge when a thing expressly forbidden by church authority is also forbidden by civil law?

The courts below do not answer this question.

3. The courts below fail to discuss the basis in the record for their unexplained conclusion that. "The trial court did not attempt to decide an ecclesiastical question nor to enforce religious conformity" (A 19). The trial court "disclaimed any attempt to evaluate or define appellants' rights, as Catholics, to distribute leaflets during the Mass" (A 5); but the court necessarily does just that when it defines as a crime "disobeying a specific directive of the pastor and distributing literature during the offertory, in a precipitous manner, contrary to the customs and usages of the Blessed Sacrament Church" (A 17-18).

The most cursory examination of the evidence in this case bearing on the critical conclusion just quoted will demonstrate a massive intrusion by civil courts into ecclesiastical matters.

The distribution of leaflets during the offertory is a common practice in Catholic Churches throughout the world, and in fact had occurred at Blessed Sacrament Church on a number of prior occasions (Tr. 110; 170-171; 181-184; 196; 218-221).

An internationally famous Roman Catholic liturgical expert, Father Robert W. Hovda, testified that while local congregations such as Blessed Sacrament Parish have the right to regulate, within certain limits, the times during Mass when members of the congregation could speak or distribute literature, no local congregation or pastor had the right to entirely prohibit speech or the distribution of literature on a matter of conscience such as that set forth in the literature distributed here (Tr. 231-234, 236-267).

The chairman of the Liturgical Commission of the Archdiocese of Washington and a member of the local Roman Catholic Archbishop's Curia gave it as his opinion, however, that a local pastor's prohibition of speech or literature would be "binding." He did not, however, undertake to assign reasons for this opinion (Tr. 274-286).

The courts below resolved the issue in favor of the local pastor's authority, notwithstanding age-old Roman pretensions to universal authority in such matters.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the District of Columbia Court of Appeals.

Respectfully submitted

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APPENDIX

COMPLAINT

District of Columbia v. Alan Mark Silbergeld and Paul J. Riley, Criminal Nos. 29073-69A and 29074-69A in the District of Columbia Court of General Sessions, Criminal Division.

Alan Mark Silbergeld [and] Paul J. Riley [on] August 10, 1969 inside 6001 Western Avenue (B.S. Church), N. W. did then and there engage [printed phrase strickent out] disturb a congregation engaged in a religious exercise contrary to the Act of Congress. . .Section 22-1114, D. C. Code. . . .

BILL OF PARTICULARS

Comes now the District of Columbia, through Hubert B. Pair, Acting Corporation Counsel, Robert H. Campbell and Louis D. Harrington, his Assistants, in response to the Order of the Court, Honorable Alfred Burka presiding, dated August 27, 1969, and defendants Motion for a Bill of Particulars dated August 15, 1969, and answers as follows:

1) The exact time and place of the alleged criminal conduct.
Answer: August 10, 1969, at the Blessed Sacrament Catholic Church, 60001 Western Avenue, N. W.

2) The precise manner in which the crime is alleged to have been committed.
Answer: Defendants, Paul Reilly and Alan Mark Silbergeld, passed out literature while the ushers were passing the basket through the congregation taking up a money collection.

3) The nature of the religious ceremony, and the precise part thereof disturbed, and the precise manner of disturbance.
Answer: The religious ceremony was a Catholic Mass, when the defendants without authorization or permission passed out literature during the collection. This activitiy disrupted the worshipful devout mood of the congregation.

4) The name and address of the complaining witnesses.
Answer: Below are listed names of complaining witnesses, some or all of whom may be called by the Government.

Father Quinn ,
Priest, Blessed Sacrament
Catholic Church
6001 Western Avenue, N. W.
Washington, D. C.

Mr. George Scaffer
Lector, Blessed Sacrament
Catholic Church
6001 Western Avenue, N. W.
Washington, D. C.

Captain Estes,
Fourth District
Metropolitan Police Department

Mr. John J. Daly

Mr. Fancis Emmet

Sargent Emerson
Fourth District
Metropolitan Police Department

Mrs. Francis P. Murray

Mrs. Eugene Ingold

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

The case was tried without a jury on November 6, 1969. Defendants were charged with a violation of Title 22, Section 1114 of the District of Columbia Code, 1967 edition, which provides:

> "It shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia;....."

The Defense takes the position:

1. That the acts of the Defendants were designed to assert their right to distribute literature at certain times during the celebration of a Roman Catholic Mass;

2. That the statute (22-1114) to be valid must be construed to exclude disturbance which does not amount to a breach of the peace;

3. That conviction of Defendants on the charge would violate their rights under the religious freedom provision of the First Amendment to the Constitution of the United States.

FINDINGS OF FACT

The Defendants are members of an organization named Center For Christian Renewal, Inc., hereinafter called the "Center". They were arrested on August 10, 1969 as they left Blessed Sacrament Church, a Roman Catholic Church in the District of Columbia.

Members of the Center on a prior occasion at St. Matthew's Catholic Cathedral had distributed literature in a manner contrary to the wishes of that pastor and of that congregation.

It became known to the pastor of Blessed Sacrament, Father Quinn, and some members of the congregation and the parish council of a contemplated visit to Blessed Sacrament by members of the Center at the 12:55 p.m. Mass scheduled for August 10, 1969. The pastor and some members of the parish council met and decided upon a written plea to the members of the Center to be read by a lay member of the council requesting those of the Center to desist from any form of disruptive conduct. The written text of the plea was as follows (Government Exhibit No. 1).[1]

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[1] "We are sorry to have to inform the congregation that members of the Group which has been causing the disturbances during and following Mass at St. Matthew's Cathedral in recent weeks have assembled here this morning. Some may already be seated in the pews among you.

They were advised outside that the law of the District of Columbia makes it a misdemeanor to create a disturbance during the course of a religious service that any person engaging in such a disturbance is subject to arrest; that creation of a disturbance in this church during any Mass or service - by deliberately standing at an improper time, by addressing the Congregation,

moving about or occupying the aisles, by distributing printed materials, or by any other disruptive action WILL MEET WITH PROMPT ARREST. The police have been advised of the possibility of disturbances and are present. We sincerely hope that the leaders of the assembled group will heed this warning and that there will be no disturbance. Should one actually occur, we will regretfully ask that appropriate arrests be made. Every effort will be made to do this quietly and with a minimum of disruption to the Mass.

Agagin, we hope this will not be necessary, but should it be, we ask our parishioners and ushers to remain quietly in your places without becoming involved. We know you all share our desire that no disturbances will take place."

It was decided that if the members of the Center failed to heed the plea (Government Exhibit No. 1) they should be arrested. The plea was read by a layman lector, George Shaffer, early in the mass proceedings. Father Quinn had arranged with Captain Estes of the local Metropolitan Police Precinct for available police officers to be on hand to make arrests if requested by the pastor.

During that part of the mass when ushers take collection from among the congregation, as the ushers moved down the aisles passing collection baskets, members of the Center, including both of the Defendants[2] followed the ushers and handed out leaflets (Government Exhibit No. 2) to the persons seated at the end of the pews to pass across to others in the pew.

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[2]Defendants' attorney challenged the proof of identity of Defendants in the Governments case. It is clear from the totality of the evidence that the Defendants were involved in the disturbance. Both were identified in particular by Government witness, George Shaffer, who observed them in the church, observed them distributing literature, and observed them to continue distributing to the end of the aisle.

Question: "While the ushers were taking up the collection of money and the Defendants were passing out their leaflets?"

Answer: "Yes." (Tr. 7)

Father Liston, the celebrant of the mass, upon observing the members of the Center distributing literature, walked to the lecture and stated, "I fear that the disturbance we expected is happening." He asked those distributing the literature (including Defendants) to stop; but they continued the distribution.

The mass as normally and customarily celebrated at Blessed Sacrament does not provide for nor authorize persons to leave the pews and follow the ushers during the collection of money gifts from the congregation, nor during that time to distribute literature in derogation of the decision of the parish council and the pastor of the church.

A number of the parishioners present in the congregation were upset by the incident. A woman member exclaimed..... "Call the police...arrest these men....." George Shaffer was fearful that someone would start hitting them, and it created great emotion. Reverend Paul Liston became quite disturbed and purely agitated. He could not hold his hands extended but had to hold them together. Reverend William L. Quinn, Pastor, was disturbed by the frenzied activity what with the Defendants throwing things into each pew and the people throwing them back and by the fact that the mass was stopped (interrupted). Francis Emmett observed the extreme tension in the church, and he could not pray. A Mrs. Ingold could not concentrate on her prayers.

1. RIGHTS OF DEFENDANTS TO DISTRIBUTE MATERIAL DURING THE MASS SERVICE

This Court cannot evaluate or define the rights of the Defendants, as Catholics, to participate in the mass service by distributing leaflets. It is well settled that American Courts under the inhibitions of the First and Fourteenth Amendments to the Constitution of the United States must refrain from adjudicating disputes over religious principles or pro-

cedures. See Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 89 S.Ct. 601, 1969.

2. QUESTIONS OF DISTURBANCE

The statute employs the language "...molest or disturb any congregation engaged in any religious exercise or proceedings...". Defendants take the position that a breach of the peace is necessary for there to be a disturbance under the statute. This Court disagrees with that position as a matter of law and concludes that there was, in fact, a disturbance in this case. Breach of the peace is not an element of the misdemeanor charged here under 22-1114; the key term is "disturb". If this were a prosecution under 22-1121 it would be necessary for this Court to decide the breach of the peace issue. It is sufficient to state that, should that be necessary, this Court would have no difficulty in concluding from the evidence that there was in fact a breach of the peace.

In his closing summation, Defendants' counsel conceded that there was a disturbance and that a religious service was involved. That members of the congregation were upset, and "disturbed" appears clear from the facts recited above.

Wharton in his treatis on criminal law (Section 814) states:

> "It is not necessary that the entire congregation be disturbed to constitute a disturbance of a religious service...the disturbance of only one member of a congregation...is such...as will warrant the conviction of a person as charged. Every individual worshiper...as well as the entire congregation...is protected..."

The religious assembly is not unique in this respect. In a somewhat broader vein see 24 Am.Jur. 2d. section 5 et seq:

> "What constitutes an unlawful disturbance must depend somewhat on the nature and character of each particular kind of a meeting...and the usage and practice governing such meetings...any conduct which is contrary to the usage of the particular sort of meeting and class

> of persons assembled and interferes with its due progress or annoys the assembly in whole or in part is a disturbance.....The disturbance of only one member of a congregation assembled for worship is such a disturbance of the congregation as will warrant a conviction....."

See State v. McNair, 1965, 135 N.W. 2d 463, (Nebraska), in sustaining conviction:

> "What constitutes a disturbance of a lawful assembly is not susceptible of specific definition but must depend to some extent upon the nature and character of the particular assemblage. However, while it may be difficult to define beforehand, there is no problem in determing what constitutes a disturbanec in a given case."

See Ford v. State, 1962, 355 S.W. 2d 102, (interruption of religious ceremony). Jones v. State, 1964, 136 S.E. 2d 358, (Georgia); Clark v. State, 1904, 78 S.W. 1078, (Texas); Fowler v. State, 1956, 93 S.E. 2d 188, (Georgia).

Although counsel conceded that a disturbance took place, he argues that the conduct of the Defendants did not cause the disturbance, but rather, it was the anticipation of the Defendants' appearance at Blessed Sacrament Church representing a dissident organization known as Center For Christian Renewal, Inc., prior radio publicity of their appearance, the reading of a statement to the congregation by the lay lector, the declaration of the celebrant that "I fear that the disturbance we expected is happening...", that was the root of the disturbance, citing Gregory v. City of Chicago, 1969, 22 L.Ed. 2d 134, 89 S.Ct. March 10, 1969.

That argument overlooks the essence of this case: there would have been no "disturbance" except for the conduct of Defendants. The Gregory case is distinguishable; the Defendants there were conducting themselves in accordance with law in a public street where they were entitled to be and performing acts for which they had sought and been granted a permit. Defendants here were non-confromists who had been denied authority to act as they did by those (pastor and

parish council) in charge of and responsible for the premises. The Court notes, in passing, that the latter had under the law affirmative responsibility for seeing to it that the premises were not used as an area for law violations or physical injury to their members and invitees.

In testimony and argument, Defendants emphasized that from the time that the celebrant of the mass asked them to leave only 10 or 20 seconds elapsed before the Defendants, continuing their efforts, finished distributing their literature. This Court considers that emphasis to be unimportant. The cause of a disturbance, a shot, a shout, an assault, may take only a moment. The important thing (See cases cited above) is to recognize the impact of the initiating action on the persons and environment involved.

It is also unimportant whether the Defendants had good or bad motives (See Walker v. State, 1912, 146 S.W. 862, (Arkansas) in distributing the literature, or whether they were or were not of the Catholic faith. The question is whether as a matter of fact, judged objectively, there was beyond any reasonable doubt a disturbance.

3. THE CONSTITUTIONAL QUESTION

Defendants assert that the statute (22-1114) violates the First Amendment of the United States Constitution in that it "presumes to regulate behaviour based upon its location in a church."

They seem to deduce from the fact that the District of Columbia Government, through its police and courts, undertakes to enforce anti-disturbance laws in places of worship, that it was, thereby, enforcing a law which establishes a religion in violation of the First Amendment of the Constitution of the United States which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....."

Surely the defense does not contend that one cannot disturb the peace in a church anymore than it might contend that other violations of law would be immune from prosecution

because the act was committed in a church. At best this argument comes down simply to the fact that this prosecution may have been brought under the wrong subsections of Chapter 11 of Title 22, ie., Section 1114 instead of 1121.

The Defendants' argument would have this Court isolate the First from the Second clause of the First Amendment, ie., the "free exercise" clause. Section 1114 is a codification of a common law crime that has been enforced in the District of Columbia for at least a 135 years. Far from being a statute which "establishes" a religion, 22-1114, it is a provision which protects the individual in the free exercise of his religion. This is the purpose of the statute and of the common law rule which it codifies. In U. S. v. Brooks, 1834, 4 Cranch 427, the Court said:

> "An indictment at common law, in England, will lie for "unjustly and irreverently disturbing and hindering the curate of a parish in the exercise of his office and the reading of divine service. That, it is true was for the divine service as established by law. But in this country there is no established church, all being equally protected by law; and each sect having as perfect a right to be free from disturbance in the public worship of God according to their own forms, as the established church in England has by the common law."

DECISION

This Court finds beyond any reasonable doubt that the Defendants disturbed the congregation at Blessed Sacrament Church during their religious proceedings and thereby violated Section 22-1114 of the District of Columbia Code.

Trial findings are entered as to:

Defendant Silbergeld - Guilty.
Defendant Reilly - Guilty.

W. Byron Sorrell
Judge

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 5601

PAUL JOSEPH RILEY, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

No. 5602

ALLEN MARK SILBERGELD, ** APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeals from the District of Columbia Court of General Sessions *

(Argued April 19, 1971 Decided November 24, 1971)

Landon G. Dowdey, with whom *Roark M. Reed* was on the brief, for appellants.

Ted D. Kuemmerling, Assistant Corporation Counsel, with whom *C. Francis Murphy*, Corporation Counsel, and *Richard W. Barton*, Assistant Corporation Counsel, were on the brief, for appellee.

Before KELLY, FICKLING and REILLY, Associate Judges.

KELLY, *Associate Judge:* These appeals are from convictions of disturbing a religious congregation in violation of D.C. Code 1967, § 22-1114.[1]

* Now the Superior Court of the District of Columbia.

** The correct spelling of appellant Silbergeld's name is Alan Mark Silbergeld

[1] § 22-1114. Disturbing religious congregation.

It shall not be lawful for any person or persons to molest or disturb

(Continued on page 2)

Anticipating from prior publicity the attendance at Mass of members of the Center for Christian Renewal, and being aware of allegedly disruptive actions previously taken by that group at St. Matthew's Cathedral, the pastor of the Shrine of the Most Blessed Sacrament, a Roman Catholic church in this city, with the advice of the parish council prepared a statement to be read at Mass should members of the group appear. On Sunday, August 10, 1969, at the 12:55 Mass, there was occasion for the lector to read the prepared statement which informed the congregation, in substance, that a disturbance similar to those that had recently occurred in other churches in the diocese was expected; that to create a disturbance during the course of a religious service was a misdemeanor; that no such disturbance would be tolerated, and that creation of such disturbance by doing certain acts, including distributing printed materials, would result in prompt arrest.[2]

(Continued from page 1)

any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provisions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense.

[2] The statement read:

"We are sorry to have to inform the congregation that members of the group which has been causing the disturbances during and following Mass at St. Matthew's Cathedral in recent weeks have assembled here this morning. Some may already be seated in the pews among you.

"They were advised outside that the law of the District of Columbia makes it a misdemeanor to create a disturbance during the course of a religious service; that any person engaging in such a disturbance is subject to arrest; that creation of a disturbance in this church during any Mass or service—by deliberately standing at an improper time, by addressing the congregation, moving about or occupying the aisles, by distributing printed materials, or by any other disruptive action will meet with prompt arrest. The police have been advised of

(Continued on page 3)

Later in the Mass, during the offertory, appellants rose and followed the ushers taking the collection down the aisles, handing out leaflets [3] to the first person in each pew to be passed along to others. The celebrant of the Mass went immediately to the lectern, announced to the congregation that the anticipated disturbance was taking place, and asked appellants to cease the distribution of literature and leave. In apparent defiance of this request, appellants continued their distribution of material for a period of about twenty seconds, then departed the church. Outside, at the request of the pastor, appellants were arrested by waiting police officers.

It was the finding of the trial court, from conflicting evidence, that despite the request to remain calm a number of parishioners were upset by the incident, one woman exclaiming "Call the police . . . arrest these men"; one man being fearful that someone would strike appellants;[4] the celebrant becoming so agitated that he could not hold his hands in a position of prayer, and the pastor being particularly disturbed by "the frenzied activity what with the [appellants] throwing things into each pew and the people throwing them back and by the fact that the Mass was stopped (interrupted)." Other parishioners were unable to pray or to concentrate on their prayers.

(Continued from page 2)

the possibility of disturbances and are present. We sincerely hope that the leaders of the assembled group will heed this warning and that there will be no disturbance. Should one actually occur, we will regretfully ask that appropriate arrests be made. Every effort will be made to do this quietly and with a minimum of disruption to the Mass. Again, we hope this will not be necessary, but, should it be, we ask our parishioners and ushers to remain quietly in your places without becoming involved. We know you all share our desire that no disturbances will take place." (R. 36-37.)

[3] The text of the leaflet accused the members and clergy of the parish of following "racist policies".

[4] The record reflects that on one occasion at St. Matthew's Cathedral a member of the Center was "slugged on his way to Communion."

The court also found that "[t]he Mass as normally and customarily celebrated at Blessed Sacrament does not provide for nor authorize persons to leave the pews and follow the ushers during the collection of money gifts from the congregation, nor during that time to distribute literature in derogation of the decision of the parish council and the pastor of the church."

The court's initial conclusion of law disclaimed any attempt to evaluate or define appellants' rights, as Catholics, to distribute leaflets during the Mass for the stated reason that it could not adjudicate disputes over religious principles or procedures.[5] It then proceeded to rule that there was proof beyond a reasonable doubt that appellants had disturbed a religious service within the meaning of § 22-1114, D.C. Code 1967.[6] Finally, citing *United States v. Brooks*, 4 D.C. (Cranch) 427 (1834), the trial court held that rather than violating the "establishment" clause of the First Amendment, as appellants alleged, § 22-1114 enforces the "free exercise" clause of that Amendment, it being a codification of the common law which similarly prohibited disturbance of divine service.

Appellants contend that § 22-1114 is unconstitutionally vague for failure to specify the kinds of conduct prohibited at a religious service or to set standards as to the type of conduct which would amount to an illegal disturbance. However, in our judgment, which accords with similar

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[5] *See, e.g.*, Presbyterian Church v. Hull Church, 393 U.S. 440 (1969); Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1 (1929).

[6] Counsel for appellants conceded in closing argument that there had been a disturbance of a religious service, but argued that whatever disturbance had occurred resulted from the reading of the statement by the lector rather than by appellants' behavior.

holdings,[7] "disturb" is a word in common use and has an ordinary meaning which is easily understood by persons of reasonable intelligence. By definition, it is a word which means, *inter alia*,[8]

> to throw into confusion or disorder; to interfere with (as by hindering or causing to turn from a course or to stop); to interfere with in the lawful enjoyment of a right; to destroy the rest, tranquillity or settled state of; to upset the mental or emotional composure of.

To be sure, the question of whether or not a person's activities may be said to disturb a meeting or assembly depends to a large extent upon the type of meeting which is supposedly disturbed. For example, acceptable conduct at a basketball game [9] or a political rally [10] is not commonly the sort of behavior which is acceptable, or expected, at a church service, or even in the reading room of a public library. Nevertheless, the fact that the term "disturb" may not be capable of precise definition does not of necessity mean that § 22-1114 violates the due process standard of vagueness.[11] A reasonable degree of certainty is all that is required, *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337 (1952), and it is our opinion that the wording of this statute meets that test.

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[7] *See, e.g.*, State v. Davis, 21 Ohio App.2d 261; 257 N.E.2d 79 (1969) (disturbing graduation ceremonies); State v. Wiggins, 272 N.C. 147, 158 S.E.2d 37 (1967), *cert. denied, sub nom.* Wiggins v. North Carolina, 390 U.S. 1028 (1968) (disturbance of school by protesting); State v. Smith, 46 N.J. 510, 218 A.2d 147, *cert. denied, sub nom.* Smith v. New Jersey, 385 U.S. 838 (1966) (disturbing city council meeting); State v. McNair, 178 Neb. 763, 135 N.W.2d 463 (1965) (disturbing city council meeting).

[8] *Webster's Third New International Dictionary.*

[9] State v. Morgulis, 110 N.J. Super. 454, 266 A.2d 136 (1970).

[10] *In re* Kay, 83 Cal. Rptr. 686, 464 P.2d 142 (1970).

[11] State v. Smith, *supra* note 7.

There appears to have been no interpretation of § 22-1114 by any court in this jurisdiction since its enactment. However, similar statutes prohibiting disturbances of assemblies or meetings, religious [12] or otherwise,[13] have been the subject of judicial consideration. In one, *State v. Olson*, 287 Minn. 300, 178 N.W.2d 230 (1970), the defendant was convicted of violating a statute proscribing conduct disturbing to the peace and quiet of others. Olson, who was not of the Roman Catholic faith but was in the company of a catholic from another parish, remained standing while the canon of the Mass was in progress, with the congregation kneeling in prayer, and criticized the celebrant of the Mass in a loud and angry tone. The court's holding was that

> [g]ranting defendant's claim that his actions were motivated by a concern for the truth as he conceives the truth to be, we believe that one who invites himself to a private place of worship such as a church or synagogue in order to contest the teachings of its pastor, minister, or rabbi, in the presence of a congregation engaged in formal religious worship, should inform himself before doing so whether and when such a disputation would be considered less than offensive. . . . A stranger who imposes himself upon a congregation in a situation such as this in a way which gives the appearance of an intentional obstruction of religious meditation by insulting remarks and bizarre behavior has exceeded the permissible limits of

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[12] *See, e.g.*, Jones v. State, 219 Ga. 848, 136 S.E.2d 358, *cert. denied, sub nom.* Jones v. Georgia, 379 U.S. 935 (1964) (disturbing divine worship by loud talking, shouting and sitting on the floor of church); Ford v. State, 210 Tenn. 105, 355 S.W.2d 102 (1962), *cert. denied sub nom.* Ford v. Tennessee, 377 U.S. 994 (1964) (disturbing a religious assembly).

[13] State v. Besson, 110 N.J. Super. 528, 266 A.2d 175 (1970) (disturbing school assembly); State v. Davis, *supra* note 7; State v. Wiggins, *supra* note 7; State v. Smith, *supra* note 7; State v. McNair, *supra* note 7.

> free speech and has infringed upon the rights of others to worship according to the dictates of their conscience. Conceding that criminal sanctions may be of limited help in curbing such indiscretions, we do not believe the State or Federal Constitutions prohibit their use in situations of this kind when public authorities consider it advisable to resort to them. [178 N.W.2d at 232-33.]

Admitting that it was inappropriate for him to make his protest during the canon of the Mass, Olson had taken the position that it would have been permissible for him to interrupt the services at a more appropriate, unspecified time without exception being taken to his conduct, and that he should not be punished for an error in timing. While the opinion does not so state, in all probability Olson was relying on *Gaddis v. State*, 105 Neb. 303, 180 N.W. 590, 12 A.L.R. 648 (1920), to support this contention. In *Gaddis*, the defendant had interrupted a sermon to correct a statement the minister had made and then, asking permission to speak, had proceeded to address the congregation. No audible objection was made when Gaddis requested that he be allowed to speak except for an impromptu musical service rendered by the choir. In reversing Gaddis' conviction for interrupting a meeting of a religious society, the court said:

> It is manifest from undisputed evidence that defendant interrupted a religious meeting, but it is not every interruption that constitutes a violation of law. Without violating the statute forbidding the interruption of a religious meeting, members of the society may repel a lawless invasion either from without or from within. Under the same principle, a member of a religious society, if permitted by its precepts and usages, may, in a becoming manner, with good motives, interrupt a minister

> to correct utterances at variance with established tenets or rites. Otherwise, freedom of worship and free speech might be impaired by bigotry and false doctrines. The proper and orderly exercise of these rights, though resulting in a commotion during a religious meeting, is not punishable in a criminal court. . . . [180 N.W. at 591, 12 A.L.R. at 649-50.]

We would agree that not every interruption of a religious service constitutes a violation of law. Certainly, to justify the imposition of criminal sanctions for disturbing a religious meeting a person must have intentionally committed an act or acts which are found to have substantially disrupted the service. A conviction cannot be had for conduct which is orderly and within the known customs and usages governing the religious exercise or proceedings in the church.[14] On the other hand, violence of conduct is not a prerequisite for conviction of disturbing a religious meeting.[15]

A trivial incident, even if explicitly forbidden, could not be the basis of a conviction under § 22-1114.[16] Here, however, the convictions are based upon the cumulative effect of appellants' actions[17] upon members of the congregation and of the clergy by disobeying a specific directive of the

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[14] State v. Olson, 287 Minn. 300, 178 N.W.2d 230 (1970); Gaddis v. State, 105 Neb. 303, 180 N.W. 590, 12 A.L.R. 648 (1920); *cf. In re* Kay, *supra* note 10.

[15] The trial court also held that breach of the peace is not an element of the misdemeanor charged here, but if it were, it would have no difficulty in concluding that there was in fact a breach of the peace. *See* Ford v. State, 210 Tenn. 105, 355 S.W.2d 102 (1962), *cert. denied, sub nom.* Ford v. Tennessee, 377 U.S. 994 (1964). Appellants do not pursue the point on appeal.

[16] For instance, a prosecution of appellants for disturbing a religious congregation "by standing at an improper time", one mode of conduct proscribed by the statement which the lector read to the congregation.

[17] Contrary to appellant Riley's contention, there is sufficient evidence of record to permit a finding that he engaged in distribution of literature at the Mass and indeed, it was so stipulated at trial.

pastor and distributing literature during the offertory, in a precipitous manner, contrary to the customs and usages of the Blessed Sacrament Church, causing prayers to be interrupted and the Mass to be halted. The trial court believed there was a substantial disturbance of a religious meeting and, while there was evidence to the contrary, we conclude that its findings of fact have support in the evidence sufficient to preclude a holding that they are erroneous as a matter of law. These findings, in turn, support the finding of guilt beyond a reasonable doubt.

Appellants cite us to cases explicating the right to peacefully engage in First Amendment activities and the prohibition of convictions based upon the reaction of others to those activities. *Gregory v. City of Chicago*, 394 U.S. 111 (1969); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Cantwell v. Connecticut*, 310 U.S. 296 (1940). However, it was not the views expressed in the literature appellants were distributing which disturbed the congregation; rather it was the manner in which the literature was distributed, in defiance of church custom and direction, and the halting of the Mass, however briefly, which was disturbing. Furthermore, it is clear that one may not exercise claimed First Amendment rights at any place or at any time, *Adderley v. Florida*, 385 U.S. 39 (1966), *reh. denied*, 385 U.S. 1020 (1967); *Cox v. Louisiana*, 379 U.S. 536 (1966), nor do so at the expense of the constitutional rights of another. As the late Mr. Justice Black, speaking of the distribution of literature in the exercise of those rights, said in *Martin v. Struthers*, 319 U.S. 141, 143 (1943):

> The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute lit-

erature; Lovell v. Griffin, 303 US 444, 452, 82 L ed 949, 954, 58 S Ct 666, and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. Schneider v. Irvington, 308 US 147, 162, 84 L ed 155, 165, 60 S Ct 146. Yet the peace, good order, and comfort of the community may imperatively require regulation of the time, place and manner of distribution. Cantwell v. Connecticut, 310 US 296, 304, 84 L ed 1213, 1218, 60 S Ct 900, 128 ALR 1352. No one supposes, for example, that a city need permit a man with a communicable disease to distribute leaflets on the street or to homes, or *that the First Amendment prohibits a state from preventing the distribution of leaflets in a church against the will of the church authorities.* [Footnote omitted.] [Emphasis supplied.]

Finally, we reject appellants' contention that their convictions resulted from an impermissible intrusion into a dispute among members of a church congregation over a purely religious matter. The trial court did not attempt to decide an ecclesiastical question nor to enforce religious conformity, as appellants would have us believe. It did not receive the testimony as to the customs and usages of Blessed Sacrament Church in order to interpret canon law or liturgical practice but solely as an aid in determining whether or not appellants had violated a criminal statute; a statute which it correctly held was a guarantee of the free exercise of religion to all persons.

In summary, we hold that a legitimate governmental interest in protecting freedom of worship as well as the maintenance of peace and good order in the community underlies § 22-1114 of the D.C. Code, prohibiting disturb-

ances of religious meetings. We hold, further, that § 22-1114 does not impinge upon First Amendment freedoms, nor is it unconstitutionally vague or overbroad on its face or, under our construction of the statute, as applied here.

Accordingly, the convictions are

Affirmed.

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Supreme Court, U. S.
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MAR 23 1972

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

TERM, 1971

No. 71-1067

PAUL JOSEPH RILEY and
ALAN MARK SILBERGELD, *Petitioners*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

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v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

1. Whether this Court should exercise its jurisdiction to review by writ of certiorari a District of Columbia Court of Appeals judgment involving a misdemeanor conviction under a statute of purely local application and significance.

2. Whether the provisions of D. C. Code, § 22-1107 (1967), which proscribe disturbance of a religious congregation during worship as construed by the District of Columbia Court of Appeals, are unconstitutionally vague or overbroad.

COUNTER-STATEMENT OF THE CASE

In informations filed in the District of Columbia Court of General Sessions, Criminal Division, petitioners were charged with molesting and disturbing a congregation engaged in a religious exercise, on August 10, 1969, at the Blessed Sacrament Church in Washington, D. C. (R. 17, 26, 34). Upon their plea of not guilty, petitioners were tried, found guilty, and sentenced to pay a fine of $100 (R. 34, 41, 349). Thereafter, petitioners appealed to the District of Columbia Court of Appeals which, on November 24, 1971, affirmed the judgments of conviction. *Bible et al. v. District of Columbia*, D. C. App., 283 A. 2d 819 (1971). On February 18, 1972, there was filed in this Court a petition for a writ of certiorari to the District of Columbia Court of Appeals.

The evidence adduced at trial was, in substance, as follows:

Sometime prior to August 10, 1969, certain parishioners and priests at the Blessed Sacrament Church learned of disruptions which had recently occurred, instigated by certain members of a group known as the Center for Christian Renewal, at services held following a Mass at St. Matthews Cathedral (R. 26, 31, 78, 90, 165). In anticipation that a similar attempt might be made to disrupt their Mass, several members of the parish council and the pastor of the Blessed Sacrament Church, Father Quinn, prepared a written statement to be read at the Mass when and if this allegedly disruptive group entered their church (R.

35-37, 52, 56, 58, 76-78, 86). The prepared statement is as follows:

> "We are sorry to have to inform the congregation that members of the group which has been causing the disturbances during and following Mass at St. Matthew's Cathedral in recent weeks have assembled here this morning. Some may already be seated in the pews among you.
>
> "They were advised outside that the law of the District of Columbia makes it a misdemeanor to create a disturbance during the course of a religious service; that any person engaging in such a disturbance be subject to arrest; that creation of a disturbance in this church during any Mass or service—by deliberately standing at an improper time, by addressing the congregation; moving about or occupying the aisles, by distributing printed materials, or by any other disruptive action will meet with prompt arrest. The police have been advised of the possibility of disturbances and are present. We sincerely hope that the leaders of the assembled group will heed this warning and that there will be no disturbance. Should one actually occur, we will regretfully ask that appropriate arrests be made. Every effort will be made to do this quietly and with a minimum of disruption to the Mass. Again, we hope this will not be necessary; but, should it be, we ask our parishioners and ushers to remain quietly in your places without becoming involved. We hope you all share our desire that no disturbances will take place." (R. 36-37.)

At the 12:55 p. m. Mass on August 10, 1969, certain strangers were observed amongst the congregation who

were identified as "members of the group which has been causing disturbances during and following Mass at St. Matthew's Cathedral" (R. 36, 58, 99). In accordance with the prearranged plan, the lay reader read the above-described announcement to the congregation (R. 33-37).

Following the reading of this announcement, unusual apprehension and uneasiness were manifested by the congregation (R. 100). "* * * [A]ll the way through the Mass there was a general commotion and anticipation and expectation of something happening" (R. 192, 194).

During the offertory part of the Mass, just after the washing of the hands by the priest and while he was advancing to the center of the altar for prayer (R. 56, 57), petitioners Riley and Silbergeld got up from their seats and began to pass out leaflets to members of the congregation (R. 38, 57, 79, 100, 113, 173, 192, 195, 213). The text of the leaflets accused the parishioners and clergy of the Blessed Sacrament Church of following "racist policies" (Gov't. Ex. No. 2). The lay reader testified that petitioners "were practically throwing" the leaflets into the pews and, "in many cases, * * * [he] could see people pushing them back" (R. 39). The officiating priest also testified that petitioners "were literally throwing the leaflets in the pews" (R. 57; see also: R. 79).

While the leaflets were being thus distributed by petitioners, the officiating priest went to the lectern and announced to the congregation: "I fear that the disturbance we expected is happening" (R. 57-58). He then asked petitioners to cease their distribution (R. 49, 79, 102-103, 107). Thereafter, he remained silent for a brief period waiting for them to stop. An unidentified woman in the congregation stood up and shouted: "Isn't anybody going to do anything? Officers, officers—arrest these people." (R. 192; see also: R. 90, 101, 169, 173, 195, 214, 224.). Thereupon, petitioners hurried out onto the steps of the church where they were, upon the specific request of Father

Quinn, arrested by police officers who, by prearrangement, were present at the church (R. 36, 79, 114, 117-118).

A number of the people present at the Mass testified that they were disturbed by the occurrence. The lay reader, George Schaeffer, testified that when the Mass was interrupted he feared that there might be violence (R. 38, 40). Father Liston, the celebrant of the Mass, testified that when the Mass was halted by petitioners' activities, he became quite disturbed and nervous (R. 55, 59). His hands began to shake so that he could not hold them together in a position of prayer (R. 59).

Father Quinn characterized the disturbance, saying:

> "It was rather frenzied, actually, on the part of these men [petitioners], the activity, disrupting the services, and causing the Mass to stop, and causing great agitation among the people in the Church. And people were very greatly agitated by this commotion in the Church." (R. 80.)

Mary Ingold, a worshipper at the Blessed Sacrament Church at the time, testified that the disturbance made praying impossible, saying:

> "* * * [T]he offertory is the principal part of the Mass, and it is the part of the Mass where you are supposed to concentrate and pay attention to what is going on; and you offer up your prayers and your offering, along with the priest. And I was distracted—and you just cannot concentrate when you are distracted. * * *" (R. 108-109.)

Patricia Tanner, also a worshipper at the church at the time of the disturbance, testified that an unidentified woman in the congregation jumped up and said: "Isn't anybody going to do anything? Officers, officers—arrest these

people," and thereafter ran down the aisle in a very agitated state (R. 192).

Two other worshippers, witnesses for petitioners, who identified themselves as members of the group known as the Center for Christian Renewal, testified that no disorder was caused by the action of petitioners in attempting to distribute leaflets during the Mass (R. 177, 188, 192, 208, 214). Similarly, two other witnesses on behalf of petitioners testified that they were not disturbed by the passing out of the leaflets (R. 173, 196).

Father Hayda, a Roman Catholic priest called as a witness for petitioners, testified that it is a common custom among Roman Catholic churches in this country to permit distribution of literature during the Mass (R. 231, 240-241), and that this custom is recognized even though those attempting to distribute such literature are members of a dissenting or minority group within the parish (R. 262-263). He testified that this is a right which cannot be contravened by the authority of an individual church (R. 266). Father Hayda admitted on cross-examination, however, that because of his theological views on certain matters he is under discipline by the Archbishop of Washington (R. 258).

His testimony was contradicted in material part by Monsignor Arthur, Chairman of the Liturgy Commission of the Diocese, who testified as a rebuttal witness for the prosecution (R. 274). Monsignor Arthur testified that the pastor of a particular Roman Catholic church may authorize distribution of leaflets during the Mass, so long as the practice has not been otherwise forbidden by the law of the Church (R. 284). When asked whether or not leaflets could properly have been distributed during the Mass at the Blessed Sacrament Church where both the parish council and the pastor had forbidden it, he replied that the decision of the local church through its council and pastor was binding on the entire congregation (R. 285).

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners have failed to present any special or important reason why this Court should review on writ of certiorari the decision of the District of Columbia Court of Appeals.

A

The decision of the court of appeals involves nothing more than a matter of purely local significance.

The common-law offense of disturbing a religious service was first recognized in the District of Columbia in the year 1854 in *United States* v. *Brooks*, 4 D. C. (Cranch) 427 (1854), and later codified by Congress in 1892 as D. C. Code, § 22–1114 (1967), as a misdemeanor. Apparently, the case at bar is the first involving the offense to reach the appellate courts of this jurisdiction. It cannot reasonably be suggested, therefore, that an offense extant in the District of Columbia for 173 years, yet construed by its courts of appeal only once in that period, is of such significance as to call for the exercise of this Court's jurisdiction to review on writ of certiorari.

Where, as here, no more is involved than a controversy arising out of the occasional enforcement of a law of purely local application and significance, this Court, absent a clear showing of egregious error (and here there is no such showing), has consistently refused to exercise its jurisdiction. See *Griffin* v. *United States*, 336 U. S. 704 (1949); *Fisher* v. *United States*, 328 U. S. 463 (1946); *District of Columbia* v. *Pace*, 320 U. S. 698 (1944); *Del Vecchio* v. *Bowers*, 296 U. S. 280 (1935); *United Surety Co.* v. *American Fruit Co.*, 238 U. S. 140 (1915).

B

The decision of the court of appeals is not in conflict with the decisions of this Court.

Petitioners, citing and relying upon *Presbyterian Church* v. *Hull Church*, 393 U. S. 440 (1969), and *Everson* v. *Board of Education*, 330 U. S. 1 (1947), argue that the effect of the decision of the court of appeals in this case is to enforce conformity to established forms of worship prescribed by religious bodies, in violation of the First Amendment.[1] Petitioners' argument is plainly without merit. The decision of the court of appeals in no way dictated that petitioners conform to a prescribed form of worship. It merely upheld the First Amendment rights *of the members of the congregation* to freely exercise their religion and to conduct "* * * undisturbed worship * * * according to the dictates of their consciences." *Gannon* v. *Action*, 303 F. Supp. 1240, 1245 (E. D. Mo., 1969).

In response to this same argument made below, the court of appeals said:

> "* * * [W]e reject * * * [petitioners'] contention that their convictions resulted from an impermissible intrusion into a dispute among members of a church congregation over a purely religious matter. The trial court did not attempt to decide an ecclesiastical question nor to enforce religious conformity, as * * * [petitioners] would have us believe. It did not receive the testimony as to the customs and usages of Blessed Sacrament Church in order to interpret canon law or liturgical practice but solely as an aid in determining whether or not * * * [petitioners] had violated

[1] Petitioners also claim a violation of their First Amendment rights because D. C. Code, § 22-1114 (1967), gives protection to religious assemblies from disturbance "not afforded secular gatherings" (Petition, pp. 2, 7). The issue was neither raised in, nor passed upon by, the trial court. The issue is not, therefore, properly before this Court. *United States* v. *Vuitch*, 402 U. S. 62, 73 (1971); *United States* v. *Blue*, 384 U. S. 251 (1966); *United States* v. *Petrillo*, 332 U. S. 1 (1947); *United States* v. *Borden Co.*, 308 U. S. 188 (1939).

> a criminal statute; a statute which it correctly held was a guarantee of the free exercise of religion to all persons." *Riley, et al.* v. *District of Columbia*, D. C. App., 283 A. 2d 819, 824-825 (1971).

In *Presbyterian Church* v. *Hull Church*, *supra*, the issue involved a civil adjudication by a state court concerning church property rights, resolution of which necessitated an intrusion by the civil courts into controversies between church members over religious doctrines and practices. In *Everson* v. *Board of Education*, *supra*, the issue presented was whether or not public funds could be expended for bussing school children to Roman Catholic parochial schools. Neither of these cases addressed the issue presented here, namely, whether or not petitioners had a right to distribute leaflets during a church service, thereby interrupting prayer and the Mass and disturbing the pastor and many in the congregation, after having been specifically requested not to do so by the pastor.

Pertinent to the issue raised here is this Court's decision in *Martin* v. *Struthers*, 319 U. S. 141, 143, (1943), in which this Court upheld the rights of Jehovah's Witnesses to distribute to householders leaflets advertising religious meetings, but Justice Black, speaking for the Court, added: "No one supposes * * * that the First Amendment prohibits a state from preventing the distribution of leaflets in a church against the will of the church authorities."

C

The statute upon which petitioners' convictions were based, as construed by the court of appeals, is not unconstitutionally vague or overbroad.

Petitioners challenge the constitutionality of the statute upon which their convictions were based on the ground that it does not sufficiently define the legally proscribed conduct.

Petitioners cite and rely solely upon this Court's decision in *Coates* v. *City of Cincinnati*, 402 U. S. 611 (1971), in which the Court struck down a Cincinnati unlawful assembly ordinance which made it a criminal offense for "three or more persons to assemble, * * * on any of the sidewalks * * * and there conduct themselves in a manner annoying to persons passing by * * *." *Id.* This Court declared the statute to be unconstitutionally vague because "no standard of conduct is specified at all," and because the Ohio courts had placed no limiting construction on it. *Id.* at 614.

In this case, to the contrary, the District of Columbia Court of Appeals construed the statute and defined the type of conduct proscribed thereby (283 A. 2d at 823-824), saying:

> "We would agree that not every interruption of a religious service constitutes a violation of law. Certainly, to justify the imposition of criminal sanctions for disturbing a religious meeting a person must have intentionally committed an act or acts which are found to have substantially disrupted the service. A conviction cannot be had for conduct which is orderly and within the known customs and usages governing the religious exercise or proceedings in the church [footnote omitted]. On the other hand, violence of conduct is not a prerequisite for conviction of disturbing a religious meeting [footnote omitted].
>
> "A trivial incident, even if explicitly forbidden, could not be the basis of a conviction under § 22-1114.[16] Here, however, the convictions are based upon the cumulative effect of * * * [petitioners'] actions [footnote omitted] upon members of the congregation and of the clergy by disobeying a specific directive of the pastor and distributing literature during the offertory, in a precipitous manner, con-

trary to the customs and usages of the Blessed Sacrament Church; causing prayers to be interrupted and the Mass to be halted. * * * *

"For instance, a prosecution of * * * [petitioners] for disturbing a religious congregation 'by standing at an improper time', one mode of conduct proscribed by the statement which the lector read to the congregation."

The court in *State* v. *Smith*, 46 N. J. 510, 218 A. 2d 147 (1966), *cert. den.* 385 U. S. 838 (1966), was faced with a similar challenge when the defendant there charged that a like statute was vague because it did not spell out sufficiently the details of a disturbance which constituted the offense. The statute provided that:

"Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person." 218 A. 2d at 149.

In upholding the constitutionality of the statute, the New Jersey Supreme Court said:

"* * * Of course, the statute does not * * * [spell out the details of the disturbance constituting the offense] in specific terms, and it may be doubted that the ingenuity of man could meet that demand if the Constitution made it. But the Constitution does not insist upon the impossible. It asks only what the subject will reasonably permit, and hence if there is a public interest in need of protection, due process does not stand in the way *merely because the subject defies minute prescription.*

"The statute before us meets the constitutional demand. It speaks of 'noisy or disorderly conduct' which 'disturbs or interferes with the quiet or good order' of 'any place of assembly, public or private.' Surely, a man of ordinary intelligence knows the council chamber [the place where the disturbance occurred] at the time of a public hearing is a public 'place of assembly.' So, too, such a man knows the 'quiet or good order' of a place depends upon the nature and the purpose and the needs of the meeting. He also knows a legislative chamber from a barroom or a ball park and knows what kind of behavior comports with each." 218 A.2d at 151-152; emphasis supplied.

See also: *State* v. *Davis*, 21 Ohio App. 2d 261, 257 N. E. 2d 79 (1969); *People* v. *Malone*, 156 App. Div. 10, 141 N. Y. S. 149 (1913); *State* v. *Olson*, 287 Minn. 300, 178 N. W. 2d 230 (1970); *Ford* v. *State*, 210 Tenn. 195, 355 S. W. 2d 102 (1962), *cert. den.* 377 U. S. 994 (1964); *State* v. *Besson*, 110 N. J. Super. 528, 266 A.2d 175 (1970).

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for writ of certiorari should be denied.

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